IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 463 OF 2005

Smt. Sushilabai I. Kamble ..Appellant

Vs.

The Municipal Corporation of
Gr. Mumbai. ..Respondent

Ms. Usha Raste i/b A.B.G. and Associates for Appellant.

Ms. Geeta Jogalekar for Respondent.

CORAM: B.H. MARLAPALLE, J.

Date : June 21, 2005.

P.C.:

1. Heard the learned counsel for the appellant who has instituted L.C. Suit No.1051 of 2005 in the City Civil Court at Mumbai for the relief of permanent injunction. In the said suit draft Notice of Motion was taken out for ad-interim restraining order. The plaintiff claims that she is the owner of the suit structure admeasuring about 2000 sq.ft. situated at Survey No.187/1A i.e. CTS No.1668 at Shushilabai Kambale Compound, Shailendra Nagar, Ovaripada, W.E.

Highway, Dahisar, Mumbai - 68 and there was an eminent danger of the said structure being demolished by the officers of the Defendant-Corporation. The trial court, on perusal of the record, noted that agreement for sale was executed in favour of the plaintiff in the year 1979 and without mentioning any Survey number etc. Though CTS number was mentioned, the extract of CTS No. was not produced in respect of suit premises and the boundaries of the suit structure were also not described. Prima facie there was no evidence in support of the title of ownership. The court also noted that there was no prima facie evidence to show that it was an authorised structure. The trial court, therefore, refused the ad-interim relief by making the Notice of Motion returnable on 31/3/2005.

2. This appeal was heard and status quo order was passed for the first time on 13/4/2004 and it was in force till 7/6/2005. The learned counsel for the Municipal Corporation has filed affidavit in reply in this appeal and it has been pointed out that one commercial structure made of G.I. sheet walls with

A.C. sheet roof was existing at Survey No.187/1A, CTS No.1668 situated at Sushilabai Kamble Compound, Shailendra Nagar, Ovaripada, Western Express Highway, Dahisar, Mumbai 400 068 and the owner of the shed tried to convert the G.I. sheet walls into brick masonry walls without obtaining necessary permission from the Corporation. On receipt of complaint, site inspection was carried out and stop work notice under Section 354A of the MMC Act was issued on 8/11/2004. In pursuance of the notice, the structure was demolished on 9/11/2004 as no documents for the repair work were produced by the plaintiff. Again reconstruction was undertaken by the plaintiff which was also demolished on 1/3/2005. The plaintiff took advantage of two consecutive holidays on 17/4/2005 and 18/4/2005 and reconstructed the structure. Fresh notice under Section 354A was issued and the structure was sought to be demolished and at that stage the plaintiff approached the trial court. It is further stated that the plaintiff is not entitled for any orders protecting the suit structure erected in the manner as set out hereinabove. This affidavit supports the rejection of ad-interim relief by the

trial court.

3. In the circumstances, there is no case made out to entertain this appeal and the same is hereby dismissed in limine.

(B.H. Marlapalle,J.)